

Telling Your Client's Story of Injustice on Appeal



1

3 take aways

Importance of client centered representation

How to develop your story of injustice

How to tell the story and WIN

2

Caterpillar?

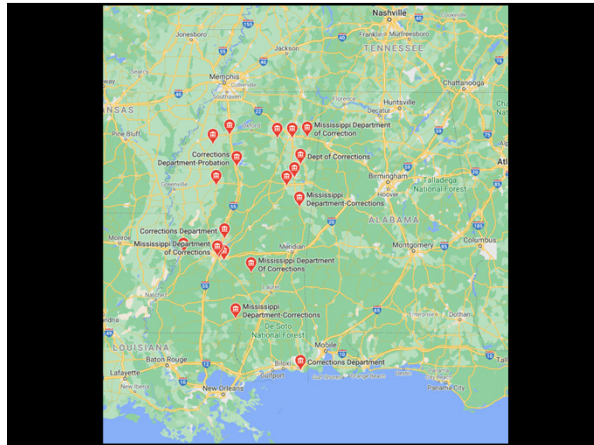


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Butterfly?

...saw the
butterfly while
I was still a
caterpillar.

4

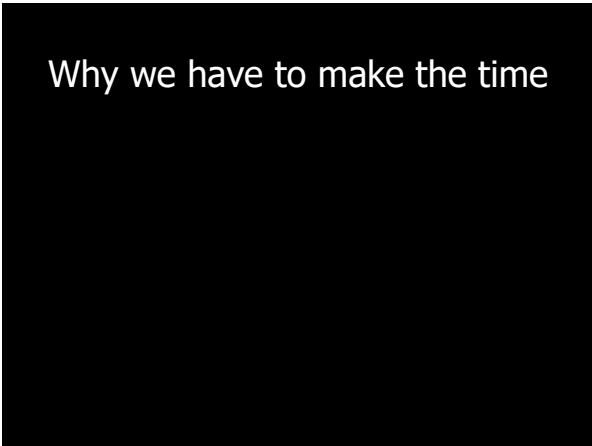


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But, I don't have time . . .



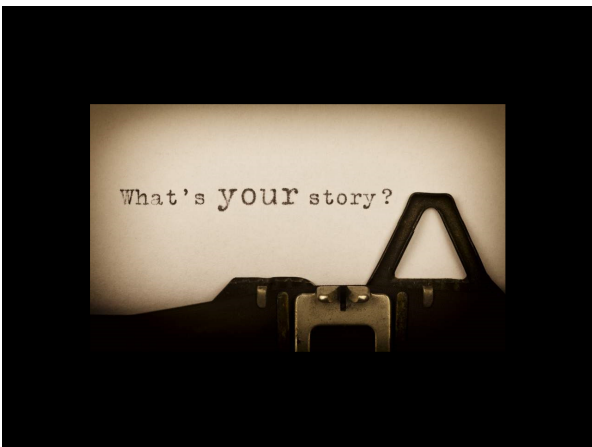
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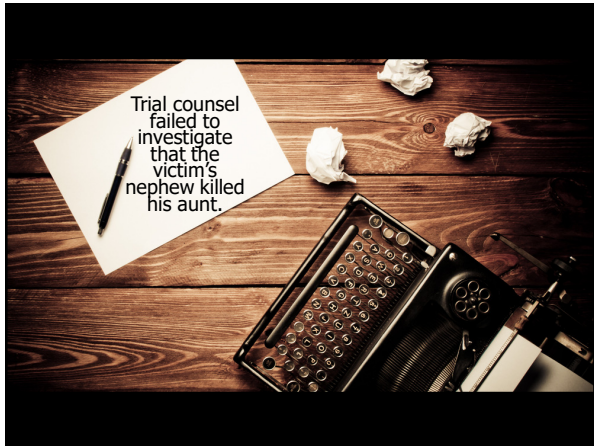


Identify the
trust
relationship

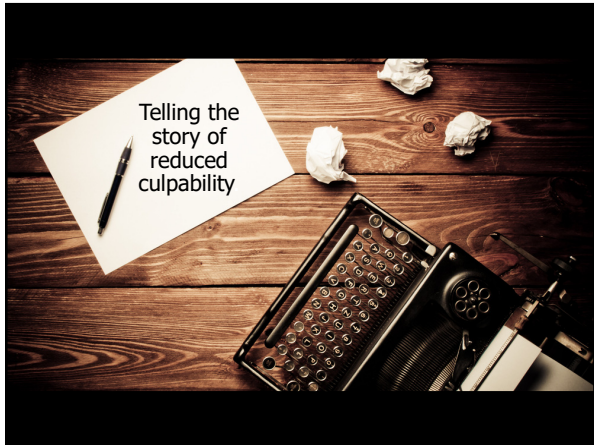
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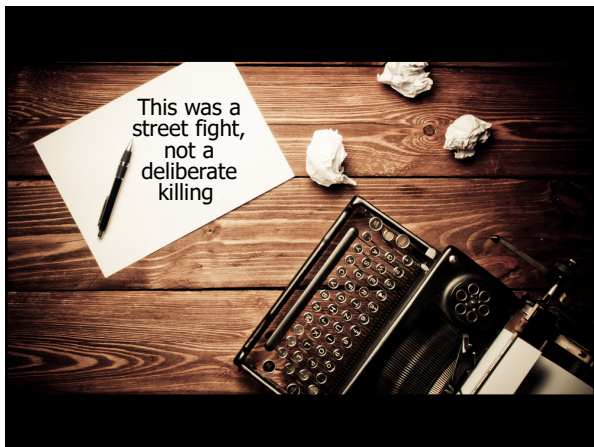
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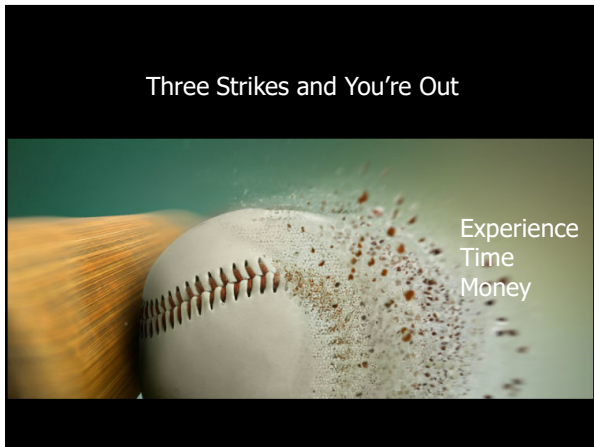
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How to tell our client's story



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How to tell our client's story

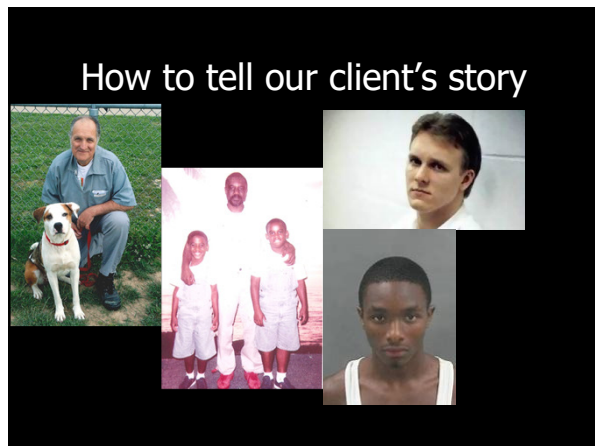


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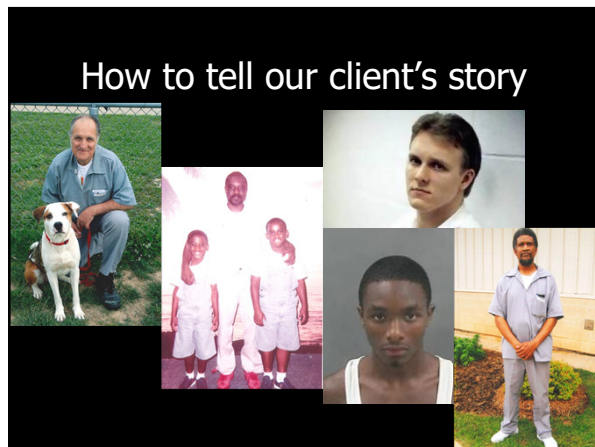
How to tell our client's story



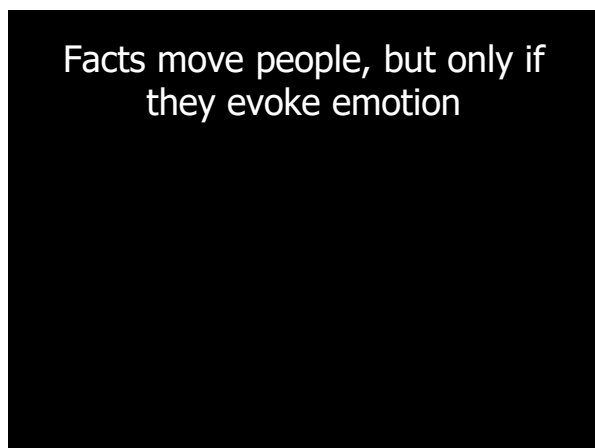
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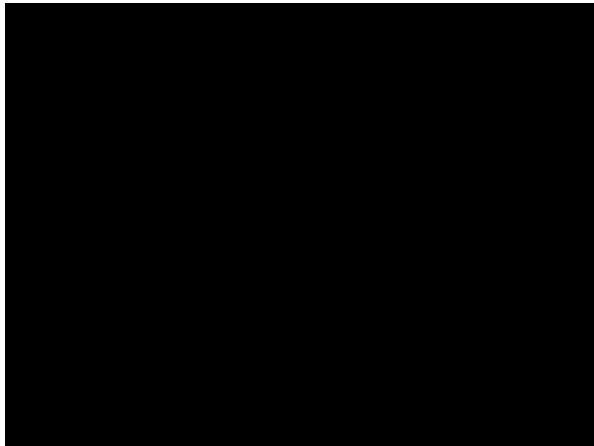
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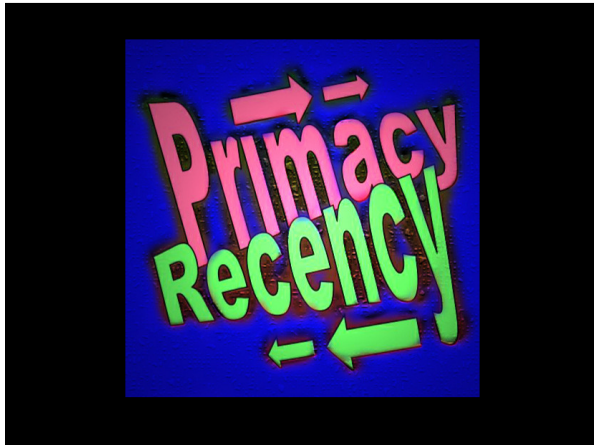
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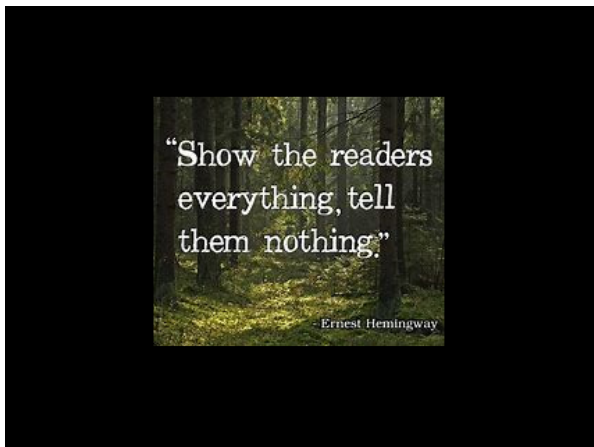
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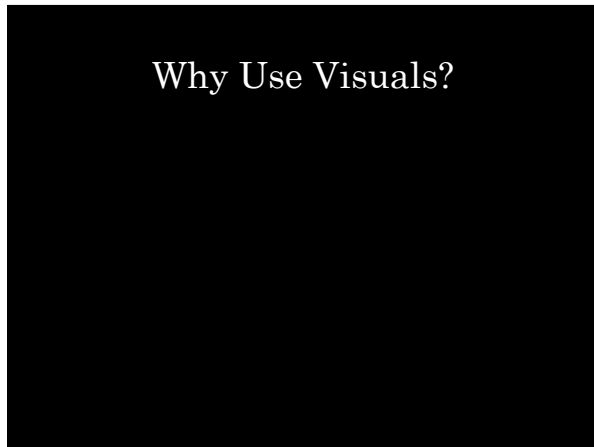
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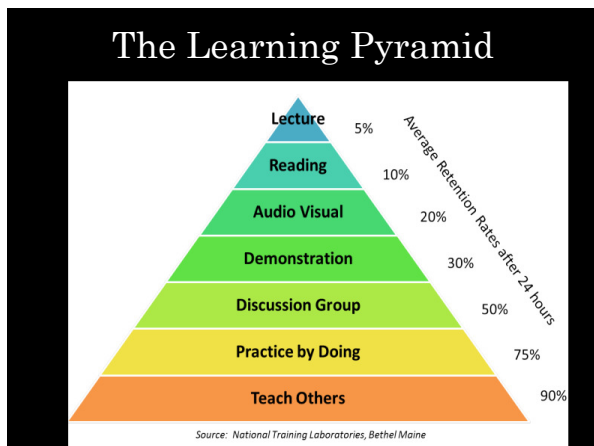
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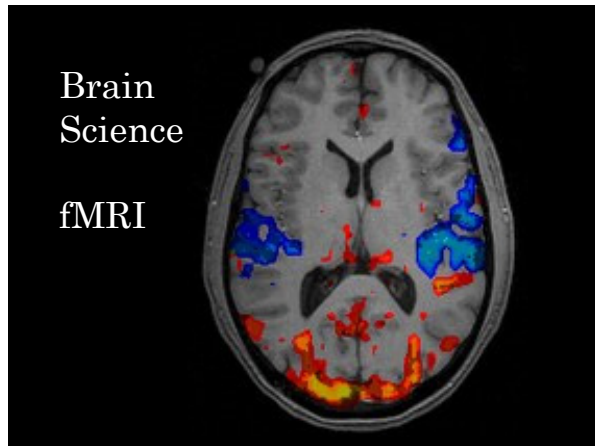
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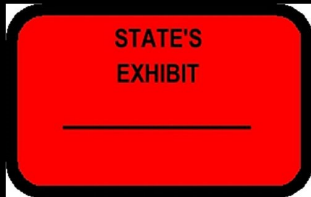


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Types of Graphics

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Photographs/Exhibits

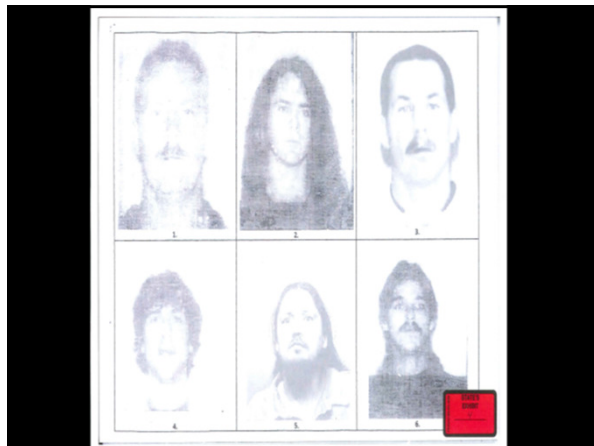


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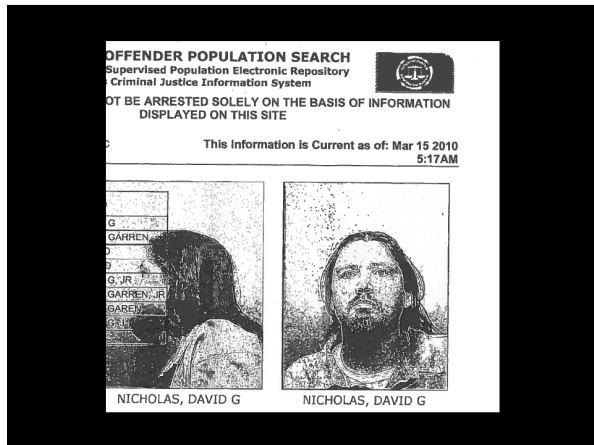
Crime Scene Photos



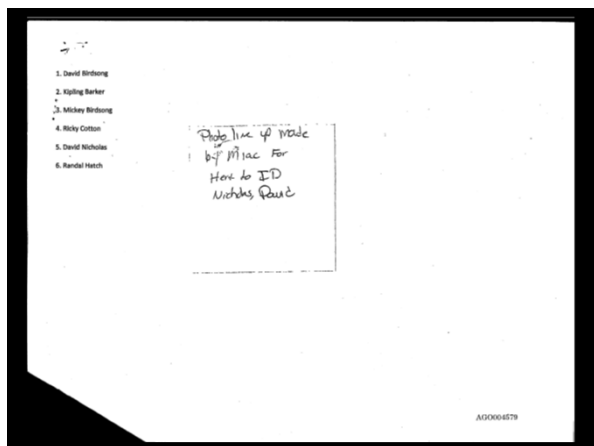
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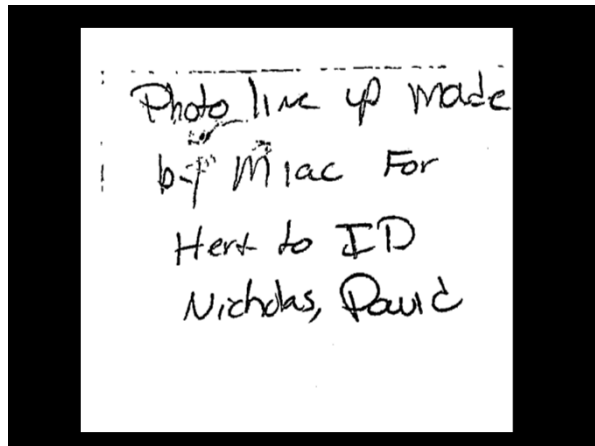
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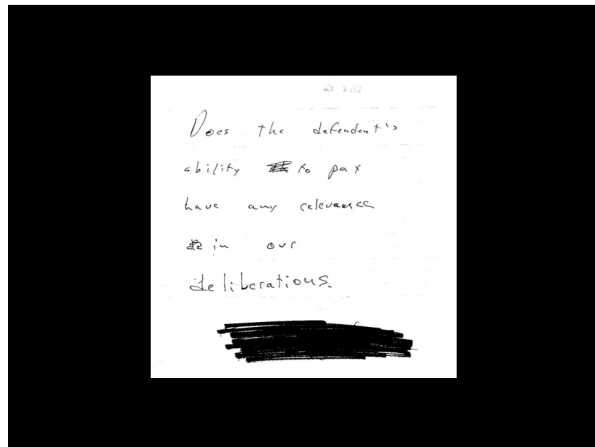
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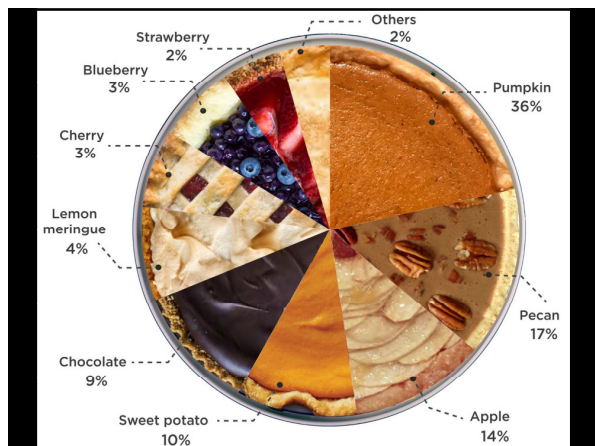
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| | |
|---|--|
| The trial court prevented the defense from rebutting the negative inference that only Mr. Butler had a motive to kill Diana (Tr. 506-07). | |
| <p align="center">B. Circumstantial Evidence: Against The Accused v. Another Who Is Not Charged</p> | |
| Respondent also advocates inequitable evidentiary rules when discussing evidence that another committed the crime. The state could adduce circumstantial evidence to meet its burden of proving a defendant guilty beyond a reasonable doubt (Resp. Br. at 39-45); yet, under the Sixth Amendment right to present a defense, the defense could never present circumstantial evidence that another actually committed the crime, no matter how strong the evidence (Resp. Br. at 26-27). The defense, according to respondent, is limited to presenting direct proof, that another committed some "act" connected with the crime. Id. The inequity of this double standard is obvious. The facts here highlight the unfairness. Even though more evidence pointed to Malloy as the killer than to Mr. Butler, the jury could never hear it. | |
| <p align="center">"Bare Suspicion"? Evidence That Malloy Murdered His Aunt</p> | <p align="center">"Proof Beyond A Reasonable Doubt"? Evidence That Jim Butler Murdered His Wife</p> |
| <p align="center">Motive</p> | <p align="center">Motive</p> |
| had a drug problem and desperately needed money; | Commented on diamond ring when he first saw Diana in December, 1987 and ring was missing from her body; |
| his girlfriend was killed eleven days earlier and because Malloy had not paid his drug debts; | Beneficiary of her life insurance policies; |

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| | |
|--|--|
| <p align="center">"Bare Suspicion"? Evidence That Malloy Murdered His Aunt</p> | <p align="center">"Proof Beyond A Reasonable Doubt"? Evidence That Jim Butler Murdered His Wife</p> |
| <p align="center">Motive</p> | <p align="center">Motive</p> |
| had a drug problem and desperately needed money; | Commented on diamond ring when he first saw Diana in December, 1987 and ring was missing from her body; |
| his girlfriend was killed eleven days earlier and because Malloy had not paid his drug debts; | Beneficiary of her life insurance policies; |
| repeatedly stole from his own grandmother, mother, and girlfriend; | Jim and his wife had financial problems; |
| was recently denied money from his grandmother, when her son, Rob Hanson, had taken over her finances; | |
| had recently been denied access to his mother's jewelry because Diana was keeping it; | |

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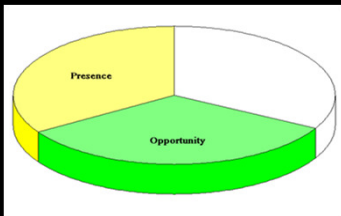
| | |
|--|--|
| <p align="center">Opportunity</p> | <p align="center">Opportunity</p> |
| lied to the police about his whereabouts at the time of the murder; | had a .22 caliber Ruger nine months earlier; |
| solicited a false alibi from his employer during the time of the murder; | had .22 caliber ammunition; |
| had a revolver just days after the murder; | |
| <p align="center">Presence At Scene</p> | <p align="center">Presence At Scene</p> |
| matched the description of the man William Smith saw coming from the location of the victim's body, just before Smith discovered it; | statements placed him at the scene at or near the time of the murder; |
| drove a car similar to the one that Smith saw coming from the area of the body; | fingerprints were on his wife's car; |
| hung out and partied at an I-435 overpass and the victim was found dead 1/8 mile from an I-435 overpass; | |
| <p align="center">Inconsistent Statements and Suspicious Actions</p> | <p align="center">Inconsistent Statements and Suspicious Actions</p> |
| lied to the police when he said he had never been to the victim's apartment; | said he had not shot a gun in years and then refused a gun residue test; |
| lied to the police about his whereabouts at the time of the murder; | said he lost a key to a lock box on the dune buggy and later the key was available; |
| | admitted being in his wife's car the day of the murder, but could not remember what for; |
| <p align="center">Possession Of Fruits Of Crime</p> | <p align="center">Possession Of Fruits Of Crime</p> |
| tried to sell a diamond ring matching Diana's just days after she was murdered; | |

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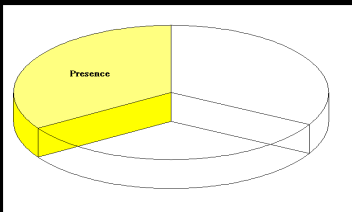
Reply Brief



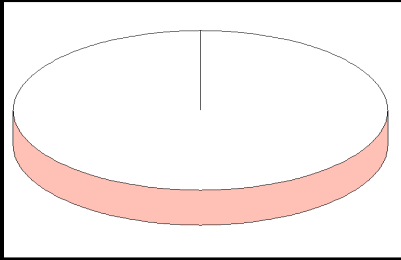
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State's Case after a
reasonable investigation

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Inconsistent Statements

| Witness | Trial Testimony | Initial Statements |
|----------|--|---|
| Martin | Blood Spurted While Johnson Inside Truck | Johnson <u>got out of truck</u> . Martin saw blood as Johnson returns |
| Wolfe | Saw Jab Through Window | Both <u>got out of vehicles</u> & exchanged words |
| Brandon | Black swung hand through window; then Johnson <u>got out</u> | Both <u>got out of vehicles</u> and exchanged blows in middle of street |
| Friend | Both <u>got out</u> at the same time and fought | |
| Copeland | Johnson remained in pickup. Did not see Black stick hand through window | Johnson yelled at someone and <u>got out of truck</u> before injured |
| Norman | Johnson <u>got out of truck</u> before bleeding. Didn't see jab through window | |

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DNA - FBI's Calculations of Statistics

| Not Gen. Acceptable | Generally Acceptable |
|-------------------------|----------------------|
| PA Com. v. Crews | |
| IL People v. Watson | |
| AZ State v. Hummert | |
| MN State v. Bloom | |
| FL Vargus v. State | |
| CA People v. Wallace | |
| NM State v. Anderson | |
| MN State v. Alt | |
| MA Com.v. Lanigan | KY Harris v. Com |
| NH State v. Vandebogart | |
| NY People v. Mohit | |
| DC U.S. v. Porter | |
| CA People v. Barney | |

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DNA Chart

| Probability | Expert | Tr. Ref. |
|--------------------|-------------|-------------|
| 1 in 29,000,000.00 | Deadman | |
| 1 in 13,000,000.00 | Conneally | 665 |
| 1 in 11,000,000.00 | Deadman | 2443 |
| 1 in 1,170,000.00 | Deadman | 2443 |
| 1 in 186,000.00 | Conneally | 670 |
| 1 in 26,700.00 | Mueller | 843-48 |
| 1 in 1,400.00 | Mueller | 842 |
| 1 in 1,250.00 | Allen | 2818 |
| 1 in 1,000.00 | Allen | 738-41, 760 |
| 1 in 250.00 | Allen | 2818-19 |
| 1 in 25.00 | Allen | 743, 761 |
| 1 in 5.00 | Allen | 2820 |
| 1 in 3.00 | D'Eustachio | 568-72 |
| 1 in 2.30 | Lavett | 2903, 2921 |

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Jurors Who Served

| Juror # | Exposed to Publicity | | Source | No Individual Questions |
|---------|----------------------|----|-----------|-------------------------|
| | Yes | No | | |
| 5 | X | | ? | X |
| 11 | * | | Heard | |
| 14 | | X | | X |
| 62 | | X | | |
| 102 | | | ? | X |
| 147 | * | | ? | |
| 233 | X | | Newspaper | |
| 270 | X | | Newspaper | |
| 311 | X | | Jurors | |
| 332 | X | | ? | X |
| 339 | X | | Newspaper | |
| 344 | X | | Newspaper | |

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Graham Timeline



(Exs. II, JJ, KK, LL, Tr. 216-18, 224-28, 232-33, 242-44, 2084-86, 1699-1700, T.Tr. 2035).

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Provide Chart to Judges at Oral Argument



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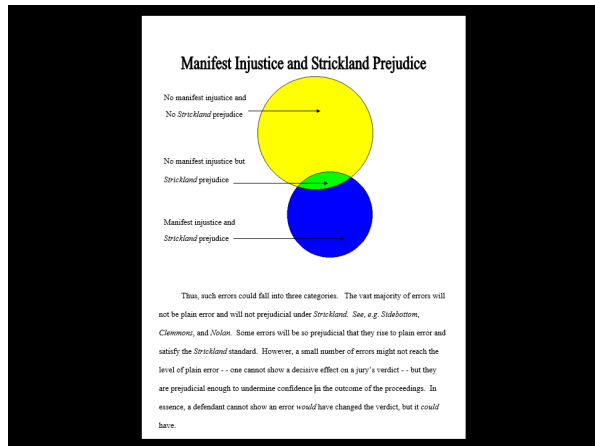
Videos



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**KNOW
THE LAW**

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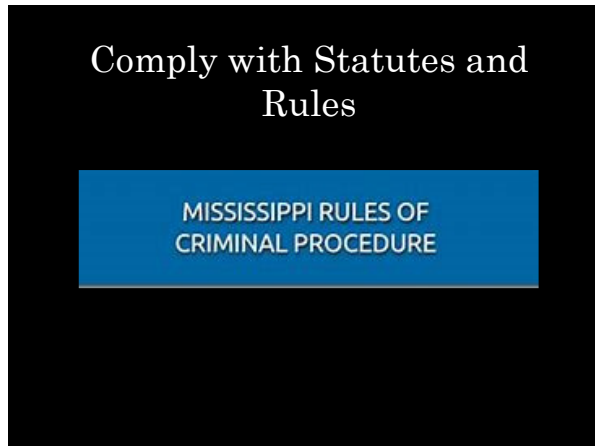
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| Comparison of Our Facts with Law | |
|--|--|
| Callison's Case | State v. Ferguson, 450 NE2d 265 (Ohio 1983) |
| DNA test offered to prove semen on new mattress belonged to another, not to Callison | Evidence offered to show witness not credible, not to prove source of semen |
| Material because Sgt. Wilson determined the stain was fresh and Hobbs claimed the attack just happened | Not material to consent issue, since evidence of sexual activity occurred 2 or 10 days earlier |
| Shows actual innocence and that another had sexual contact with Hobbs | Offered for impeachment, not to prove guilt or innocence |

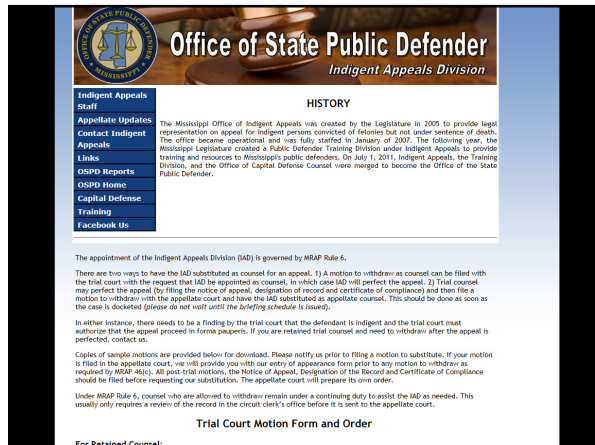
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| Napue v. Illinois | David Bell |
|---|---|
| Hamer important witness for the state | Meg Boyles is important witness for the state |
| Falsely testified no consideration for testimony | Falsely testified about her credentials |
| Went to his credibility | Went to her credibility |
| Prosecutor did nothing to correct it | Prosecutor did nothing to correct it |
| Jury apprised of other grounds for impeachment of witness | Jury never apprised of other grounds for impeachment of witness |
| False testimony denied Napue due process | False testimony denied Bell process |
| Judgment Reversed | |

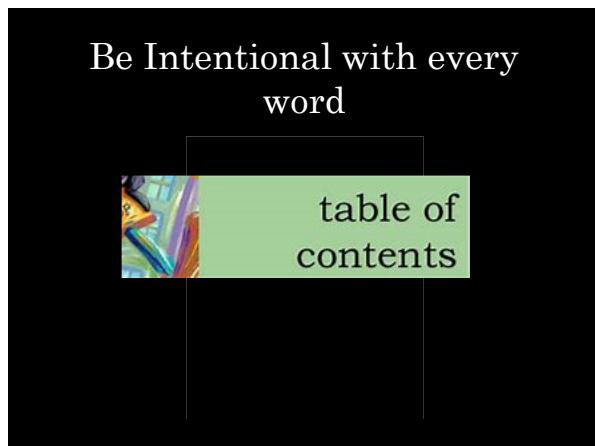
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- I. Blood Spatter Evidence Reveals Stabbing Occurred Outside the Truck
- II. Witnesses' Prior Statements Show the Fight in the Middle of the Street
- III. Lawson's Prior Statements Show a Fight that Got out of Control, Not a Deliberate Murder Deserving a Death Sentence

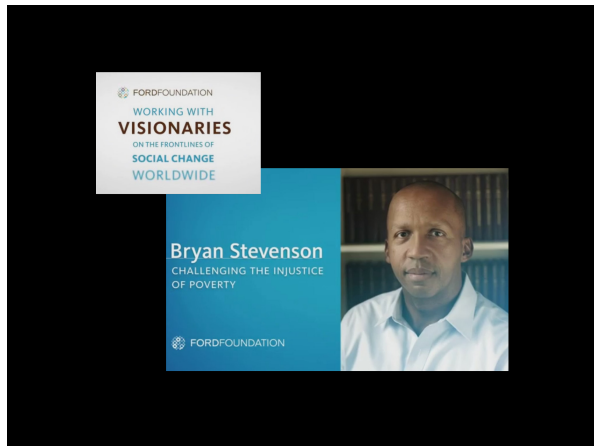
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- I. Justice for Sale
- II. Jury Misled: Would Lopez Receive Leniency for his Testimony
- III. Lopez Dominated and Controlled Brandon

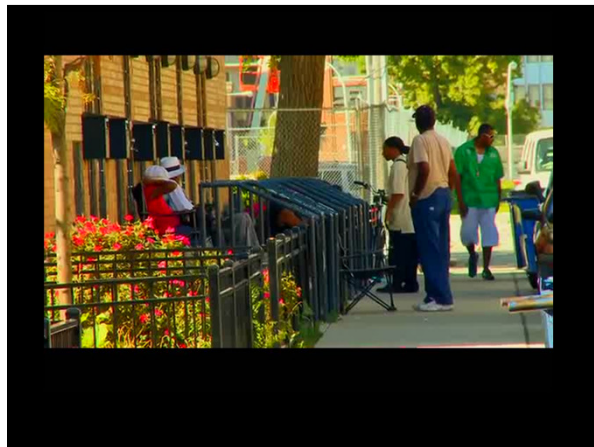
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